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Attorneys for Plaintiff
E. & J. GALLO WINERY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

E. & J. GALLO WINERY, a California
corporation,

Plaintiff,

v.

ANDINA LICORES S.A., an Ecuadorian
corporation, and DOES 1 through 20,

Defendants.

Case No. CV-05-0101-AWI (LJO)

**STIPULATION AND ORDER
REGARDING PAYMENT OF
\$219,161.00 BY ANDINA LICORES,
S.A.**

STIPULATION

Plaintiff E. & J. Gallo Winery ("Gallo") and defendant Andina Licores, S.A. ("Andina"), by and through their respective counsel stipulate as follows.

WHEREAS, on or about January 31, 2007 the Court entered its Order of Final Judgment in this matter.

WHEREAS, in the Order of Final Judgment at page 7, ¶ 1 (lines 3-4) the Court adjudged and decreed that Gallo shall recover from Andina the sum of \$217,746.43 with post-judgment interest thereon at the rate of 4.94 percent as provided by 28 U.S. C. § 1961.

1 WHEREAS, the Order of Final Judgment also provides for other rulings, relief and remedies
2 in favor of Gallo, including, but not limited to, a declaratory judgment and a permanent injunction,
3 as set forth in the Order of Final Judgment at pages 7-9 at ¶¶ 2 and 3.

4 WHEREAS, Gallo has been awarded costs on appeal in the amount of \$727.00, plus interest
5 since June 7, 2006 which award has not yet been paid.

6 WHEREAS, Gallo has filed an Memorandum of Cost seeking recovery of costs under 28
7 U.S.C. § 1920 and FED. R. CIV. P. 54 in the amount of \$43,269.90 and the Court has yet to issue and
8 file its order awarding costs.

9 WHEREAS, Gallo contends it is entitled to the recovery of fees and sanctions against
10 Andina and in this regard on December 1, 2006 filed a motion for contempt and attorney fees
11 against Andina (the “Andina Attorney Fees Motion”), which motion is still pending before the
12 Court.

13 WHEREAS, Gallo contends it is entitled to contempt sanctions against certain individuals
14 for violation of the preliminary injunction entered by this Court in May, 2006 and in this regard on
15 December 1, 2006 filed a motion for contempt sanctions against such individuals (the “Individual
16 Contemnor Motion”), which motion is still pending before the Court.

17 WHEREAS, on or about March 16, 2007 counsel for Andina sent a check, Check No. 1002,
18 to counsel for Gallo in the amount of \$219,161.00 (“Check No. 1002”), which check contained the
19 notation “GALLO v. ANDINA – FULL AND FINAL PAYMENT”.

20 WHEREAS, Andina and its counsel intended such payment solely to be in satisfaction of
21 Andina’s obligation under Order of Final Judgment at page 7, ¶ 1 (lines 3-4) to pay Gallo the sum of
22 \$217,746.43 with post-judgment interest thereon at the rate of 4.94 percent as provided by 28 U.S.C.
23 § 1961 and for no other purpose.

24 In light of the above Gallo and Andina, through their respective attorneys, stipulate as
25 follows:

26 1. Gallo may strike the words “Full and Final Payment of Judgment” from Check No.
27 1002 and proceed to present such check for payment; and, in the event that the bank to which Gallo
28

presents such check for payment refuses to honor or negotiate such check that Gallo shall return it to counsel for Andina and such counsel shall immediately issue another check in the amount of \$219,161.00 for Gallo to present and negotiate.

2. If the conditions set forth in ¶ 1., above are satisfied and upon receipt by Gallo of the \$219,161.00 amount referred to in ¶ 1., above, Andina will be deemed to have satisfied and paid in full its obligation to pay to Gallo the amount \$217,746.43 with post-judgment interest thereon at the rate of 4.94 percent as provided by 28 U.S. C. § 1961 set forth in the Order of Final Judgment at page 7, ¶ 1 (lines 3-4); however, such shall not and does not satisfy, extinguish, waive or lead to the relinquishment of any other rights of Gallo, be they under the Court's preliminary injunction, the Order of Final Judgment, or otherwise, including (but not limited to) Gallo's ability or rights to recover its costs, costs on appeal, attorneys' fees (whether under the Andina Attorney Fees Motion or otherwise), sanctions (whether under the Individual Contemnor Motion or otherwise), and/or rights under or to enforce the declaratory judgment and/or permanent injunction set forth in the Order of Final Judgment at pages 7-9 at ¶¶ 2 and 3.

IT IS SO STIPULATED this 20th day of April, 2007.

PETRIE, DORFMEIER & MORRIS, LLP

By: /s/ Sean T. O'Rourke, Esq.
Sean T. O'Rourke
Attorneys for ANDINA LICORES, S.A.

BAKER & MCKENZIE LLP

By: /s/ Tod L. Gamlen, Esq.
 Tod L. Gamlen
 Attorneys for E. & J. GALLO WINERY

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ORDER

IT IS SO ORDERED.

Dated: May 8, 2007

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE